

April 24, 1990

MEMORANDUM

TO: Karen Kelly
Assistant Dean of Instruction
Honolulu Community College
University of Hawaii

FROM: Lorna J. Loo, Staff Attorney

SUBJECT: Disclosure of the Names, Job Titles, Departments, and
Academic Fields of Individuals Serving on a Search
Committee

This is in response to your request for an advisory opinion regarding disclosure of information pertaining to individuals serving on a search committee of the Honolulu Community College, University of Hawaii ("College").

ISSUE PRESENTED

Whether the names, job titles, departments, and academic fields of individuals serving on a search committee of the College are required to be made public under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA").

BRIEF ANSWER

The names of the College's search committee members, when maintained in a government record, shall be made public. Disclosure is required because no exception to disclosure under the UIPA applies to this information. In particular, the exceptions in section 92F-13(1) and (3), Hawaii Revised

Statutes, do not apply because disclosure of the individuals' membership status would not constitute a clearly unwarranted invasion of privacy, nor would it frustrate a legitimate government function. The job titles and departments of the search committee's members are public information because section 92F-12(a)(14), Hawaii Revised Statutes, expressly makes this information about government employees public. The academic fields of the faculty members on a search committee may be ascertainable from information already made public under the UIPA, but even if they are not, the academic fields are publicly disclosable since the public interest in disclosure outweighs the individuals' privacy interests.

FACTS

The College appoints employees to serve on a search committee that performs the initial review of applicants for vacant faculty, administrative, or civil service positions at the College. The search committee reviews the applications and selects qualified applicants to be interviewed.¹ An employment applicant who is interviewed is informed, at the beginning of the interview, of the names, job titles, departments, and academic fields of the committee members conducting the interview. However, this information is currently not disclosed to other employment applicants before an interview or otherwise made public. After conducting the interviews, the committee recommends applicants for further consideration in the selection process.

An employment applicant for a faculty position has requested disclosure of the names, job titles, departments, and academic fields of the College employees serving on the search committee.

¹ For most positions, the search committee also conducts the interviews. For administrative positions, a separate interview committee performs this function. The analysis of UIPA principles regarding disclosure of committee members' names, job titles, departments, and academic fields remains the same regardless of whether the committee that the members serve on conducts both the initial review and the interviews or only performs one of these functions.

DISCUSSION

The UIPA's general rule is that "[a]ll government records are open to public inspection unless access is restricted or closed by law." Haw. Rev. Stat. . 92F-11(a) (Supp. 1989). "'Government record' means information maintained by an agency in written, auditory, visual, electronic, or other physical form." Haw. Rev. Stat. . 92F-3 (Supp. 1989). The College is an "agency"² which maintains "government records." See OIP Op. Ltr. No. 89-9 (Nov. 20, 1989) (finding that the law school, a component of the University of Hawaii, is an agency subject to the UIPA provisions). So long as the names, job titles, departments, and academic fields of search committee members are maintained by the College in a physical form, public disclosure of this information is governed by the UIPA.

The UIPA, in section 92F-13, Hawaii Revised Statutes, sets forth five exceptions to the general rule of open access to government records, two of which appear relevant to the issue at hand. This section provides in pertinent part:

.92F-13 Government records; exceptions to general rule. This chapter shall not require disclosure of:

- (1) Government records which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy;

. . . .

² "Agency" means "any unit of government in this State, any county, or any combination of counties; department; institution; board; commission; district; council; bureau; office; governing authority; other instrumentality of state or county government; or corporation or other establishment owned, operated, or managed by or on behalf of this State or any county, but does not include the nonadministrative functions of the courts of this State." Haw. Rev. Stat. . 92F-3 (Supp. 1989) (emphasis added).

- (3) Government records that, by their nature, must be confidential in order for the government to avoid the frustration of a legitimate government function;

Haw. Rev. Stat. . 92F-13(1), (3) (Supp. 1989).

The exception based on personal privacy involves a balancing of interests. Specifically, "[d]isclosure of a government record shall not constitute a clearly unwarranted invasion of personal privacy if the public interest in disclosure outweighs the privacy interests of the individual." Haw. Rev. Stat. . 92F-14(a) (Supp. 1989). According to the UIPA's legislative history, "[i]f the privacy interest is not 'significant', a scintilla of public interest in disclosure will preclude a finding of a clearly unwarranted invasion of personal privacy." S. Conf. Comm. Rep. No. 235, 14th Leg., 1988 Reg. Sess., Haw. S.J. 689, 690 (1988); H. Conf. Comm. Rep. No. 112-88, Haw. H.J. 817, 818 (1988).

The OIP has previously opined that a faculty member serving on a student admissions committee has no significant privacy interest in being identified as a committee member and that there is more than a "scintilla" of public interest supporting this disclosure. See OIP Op. Ltr. No. 89-9 (Nov. 20, 1989). This conclusion followed from an examination of the legislative intent behind the UIPA with regard to disclosure of information about public employees' government positions. As was noted in this opinion letter, the Legislature had declared that certain records, including various details about government employees' occupational status, shall be disclosed "as a matter of public policy" and that "[a]s to these records, the exceptions such as for personal privacy and for frustration of legitimate government purposes are inapplicable." S. Conf. Comm. Rep. No. 235, 14th Leg., 1988 Reg. Sess., Haw. S.J. 689, 690 (1988); H. Conf. Comm. Rep. No. 112-88, Haw. H.J. 817, 818 (1988). Thus, the Legislature determined that government employees have no significant privacy interest in many details relating to their employment, including each employee's name, job description, job title, department, education and training background, and previous work experience, and expressly made this information public. Haw. Rev. Stat. . 92F-12(a)(14) (Supp. 1989). The OIP, therefore, concluded that like these other details about an individual's government position, the disclosure of an individual's membership status on a student

admissions committee would not constitute a clearly unwarranted invasion of privacy. See OIP Op. Ltr. No. 89-9 (Nov. 20, 1989).

It follows that College employees also do not have a significant privacy interest in their membership status on a search committee of the College, whether or not this status is included in their job descriptions, when this membership is part of their services performed as public employees. Yet, disclosure of the committee's membership will significantly serve the public interest behind the UIPA, namely that the "conduct of public policy--the discussions, deliberations, decisions, and action of government agencies--shall be conducted as openly as possible." Haw. Rev. Stat. . 92F-2 (Supp. 1989); see id. Because the public interest outweighs the privacy interest of the individual, disclosure of the names of a search committee's members would not constitute a clearly unwarranted invasion of personal privacy under the UIPA.

OIP Opinion Letter No. 89-9 (Nov. 20, 1989) also concluded that revealing the members of a student admissions committee would not frustrate a legitimate government function under section 92F-13(3), Hawaii Revised Statutes. Specifically, disclosure of the members' identities will not discourage candid discussion within the confines of the committee meetings, inhibit intra-committee debate, or result in the premature disclosure of the recommended outcome of the deliberative process. See OIP Op. Ltr. No. 89-9 (Nov. 20, 1989); compare OIP Op. Ltr. No. 90-8 (Feb. 12, 1990) (disclosure of drafts of correspondence and employees' notes would frustrate the legitimate government function of decision-making by inhibiting candid discussion and deliberation).

By analogy, disclosure of the identities of members of the College's search committee will similarly not result in such chilling effects upon agency decision-making. Disclosure may subject committee members to occasional unwanted overtures on behalf of an applicant, but this possible effect should not hamper any discussion and deliberation among committee members about the applicants. See id. Such overtures could be handled in accordance with the College's ethical standards of conduct for committee members. Hence, disclosure will not frustrate the search committee's legitimate decision-making function. Since no exceptions to disclosure under the UIPA apply to the names of College employees serving on a search committee of the College, this information is, therefore, required to be made available for public inspection and duplication. Haw. Rev. Stat. . 92F-11(a) (Supp. 1989).

Furthermore, as previously discussed, the UIPA expressly makes public many details about public employees' government positions, including their job titles and departments. Haw. Rev. Stat. . 92F-12(a)(14) (Supp. 1989). Accordingly, the job titles and departments of the search committee's members employed by the College are required to be disclosed, if such information is maintained in government records. In addition, it is possible that the particular academic fields of faculty members on the search committee may be deciphered from examining other information made public under section 92F-12(a)(14), Hawaii Revised Statutes, such as the individuals' government positions in their departments, as well as their training and experience. Even if public information about an individual's job title, department, training, and experience fails to reveal the individual's particular academic field, this information would nonetheless be public since the individual's privacy interest in this information is outweighed by the public's interest in disclosure. See Haw. Rev. Stat. . 92F-14(a) (Supp. 1989). Specifically, disclosure of this information sheds light on the government agency's qualification requirements for those teaching various subjects.

CONCLUSION

The UIPA requires disclosure of the names of College employees serving on a search committee of the College because no exception to disclosure applies to this information. The exception based on a "clearly unwarranted invasion of personal privacy" does not apply because there is no significant privacy interest in the identities of College employees serving on a selection committee, while there is more than a scintilla of public interest in this information about government conduct. The exception based on the frustration of a legitimate government function does not apply because disclosure will not frustrate agency decision-making by inhibiting candid discussion and deliberation.

The job titles, departments, training, and experience of the search committee members must be made public because section 92F-12(a)(14), Hawaii Revised Statutes, expressly requires the public disclosure of this information about government employees. The academic fields of the faculty members on a search committee are also publicly disclosable since this information may be ascertainable from information already made

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public under the UIPA, and disclosure would not constitute a clearly unwarranted invasion of privacy.

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APPROVED:

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